an emergency in depriving a person of time for calculated consideration is the same whether he be the one in danger or the one whose duty it is to avoid the threatened injury. The principal case correctly holds that the law of negligence does not and should not require mathematical accuracy or conduct of exact calculation in emergencies whatever the relation of the person to the event. See *Wise Ter. Co. v. McCormick* (1905) 104 Va. 400, 414, 51 S. E. 731, 736.

NEGLIGENCE—ASSUMPTION OF RISK—VOLUNTEER REMOVING ELECTRIC WIRE FROM PUBLIC STREET.—A broken telephone wire of the defendant company became charged with electricity by contact with a wire of the city lighting system. The plaintiff's decedent, a volunteer, received a fatal shock while attempting to remove the broken wire from the street in order to avert possible injury to passers-by. His administratrix sued the defendant for negligently causing his death. Judgment was rendered for the plaintiff. *Held,* that the judgment was correct. Hamer, J., *dissenting. Workman v. Lincoln Tel. & Tel. Co.* (1918, Neb.) 166 N. W. 550.

The defendant's negligence being established by the verdict of the jury, the decision turns upon the effect of the plaintiff's assumption of risk. In actions of this type assumption of risk will bar recovery unless sufficient justification is found for the plaintiff's assuming it. Protection of one's own property is held to be such a justification; as where one was injured in attempting to remove a sputtering wire which endangered his property. *Leavenworth Coal Co. v. Ratchford* (1897) 5 Kan. App. 150, 48 Pac. 927. But this principle does not apply where it was not the wire which brought danger to the property, but the location of the property, or the owner's desire to make a given use of it, which brought the plaintiff into danger. *State v. Chesapeake & Potomac Tel. Co.* (1914) 123 Md. 120, 91 Atl. 149 (climbing telegraph pole to rescue a pet cat); *Hickok v. Auburn Light, etc., Co.* (1911) 200 N. Y. 464, 93 N. E. 1113 (climbing pole to put new bulb into a light). Under certain conditions the plaintiff can also find justification in his intention to prevent injury to persons. So with a foreman, not employed by the defendant, killed while attempting by removal of the defendant's dangling live wire to prevent possible injury to his fellow-workers. *New England Tel. & Tel. Co. v. Moore* (1910, C. C. A. 1st) 179 Fed. 364. So also with a policeman, whose duty it is to protect the public. *Bourget v. Cambridge* (1892) 156 Mass. 391, 31 N. E. 390; *Dillon v. Allegheny, etc., Co.* (1897) 179 Pa. 482, 36 Atl. 164. The principal case is novel in that it seems to be the first in which recovery was allowed in the given situation for injuries sustained by an ordinary member of the public, acting only from public spirit. With this principle the dissenting opinion may perhaps be reconciled, and the dissent rested on the ground that the decedent was not reasonably prudent in his choice of means. Of course recovery is properly barred where the risk is taken in acts which have no reasonable relation to the protection of property or persons, such as touching wires to show that they are harmless. *Carroll v. Grande Ronde Electric Co.* (1906) 47 Ore. 424, 84 Pac. 389; *Anderson v. Jersey City Electric Co.* (1900, Ct. Err.) 64 N. J. L. 664, 46 Atl. 593. And it may be suggested that the evil sought to be avoided might be required to bear some proportion to the apparent risk. For a further note on the liability of tort feasors to volunteers, see 27 YALE LAW JOURNAL, 415.

REMOVAL OF CAUSES—RESIDENCE OF PARTIES—PLAINTIFF A RESIDENT OF STATE BUT NOT OF DISTRICT IN WHICH SUIT IS BROUGHT.—Two citizens of Alabama, one residing in the Middle District and the other in the Southern District, sued a Louisiana corporation in a state court in the Southern District of Alabama. *Held,* that the defendant might remove the cause to the federal district court

for the district within which the suit was pending. *M. Hohenberg & Co. v. Mobile Liners. Inc.* (1917, S. D. Ala.) 245 Fed. 169.

See COMMENTS, p. 935.

SALES—BILLS OF LADING—RESERVATION OF TITLE.—The National Bank of Powell, Wyo., telegraphed to the plaintiff an offer to sell a car of potatoes at $1.35 per 100. Through a mistake in the transmission of the telegram it read when delivered: "Can furnish one car clean potatoes at *once* $.35 per 100 f. o. b. Powell." The plaintiff accepted the offer and the Wyoming bank shipped the potatoes, sending a bill of lading to a bank at St. Joseph, Mo., with draft attached for the amount of the sale at $1.35 per 100. The plaintiff tendered the amount due on a 35¢ basis both to the St. Joseph bank and to the carrier. Being unable to obtain possession of the shipment the plaintiff brought replevin against the railroad company. *Held,* that upon tender of the price according to the contract, the title and right to possession passed to the plaintiff, and that the action could be maintained. *J. L. Price Brokerage Co. v. Chicago B. & Q. R. R. Co.* (1917, Mo. K. C. App.) 199 S. W. 732. See COMMENTS, p. 932.

SALES—WARRANTIES—IMPLIED WARRANTY OF WHOLESOMENESS OF FOOD.—The plaintiff purchased and ate at the defendant's drug store ice cream manufactured by the defendant. In an action for damages for illness caused by the presence in the cream of tyrotoxican, a filth product, the trial court charged that the defendant impliedly warranted the cream wholesome and fit to eat. *Held,* that the instruction was correct. *Race v. Krum* (1918, N. Y.) 118 N. E. 853.

See COMMENTS, next month.

TORTS—ENTICING AWAY PLAINTIFF'S EMPLOYEE—JUSTIFICATION.—The defendant corporation induced an employee of the plaintiff corporation to leave the plaintiff in order to enter the service of the defendant. Under his contract with the plaintiff the employee in question was under no duty to remain. The plaintiff sought an injunction. *Held,* that the defendant had committed no legal wrong and that an injunction should be denied. *Triangle Film Corporation v. Artcraft Pictures Corporation* (1918, C. C. A. 2d) 59 N. Y. L. J. 283.

In spite of the *dictum* of Pitney, J., to the contrary in *Hitchman Coal & Coke Co. v. Mitchell* (1917) 38 Sup. Ct. 65 (commented on in [1918] 27 YALE LAW JOURNAL, 794-795), the decision in the principal case seems both sensible and sound. As Learned Hand, J., says in the course of his brief but illuminating discussion, "the result of the contrary would be intolerable both to such employers as could use the employee more effectively and to such employees as might receive added pay. It would put an end to any kind of competition." The learned court felt the contention of the plaintiff to be "so extraordinary" that it refused "to consider it at large" and apparently deemed it unnecessary to cite authorities. Actual decisions upon the point are in fact not numerous. See (1918) 27 YALE LAW JOURNAL, 794. The opinion of the court in the principal case is to be commended for its frank recognition that the decision really involved a determination of policy, viz., what shall be recognized as "just cause" for intentionally interfering with the "status" of employer and employee which existed between the plaintiff and the person induced to leave.

TORTS—NEGLIGENCE—LIABILITY OF CONTRACTOR TO THIRD PARTY.—The defendant corporation constructed a highway bridge under contract with county commissioners. Some years after the bridge had been accepted by the county, the appellant's decedent sustained fatal injuries from its collapse due, as the plaintiff alleged, to negligence in its construction. *Held,* that the complaint stated a good